

(2007) 10 AP CK 0046

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 4185 of 2007

Smt. Malabanti Ratnamala and M.S. Revathi Rani APPELLANT

Vs

Elishamma @ Elizebeth, Shobhan Kumar, Smt. Sumana and RESPONDENT
Malathi

Date of Decision : 01-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 16 Rule 14, Order 16 Rule 1A, Order 16 Rule 2, 151
Constitution of India, 1950 — Article 227
Succession Act, 1925 — Section 372

Citation : (2007) 3 APLJ 142

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Nandigam Krishna Rao, for the Appellant; M. Rama Krishna, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This revision petition is directed against the order, dated 07.09.2007 in I.A. No. 1117 of 2007 in O.P. No. 1160 of 2004 on the file of the Court of the III Additional District Judge, Warangal.

2. The facts, in brief, are as under;

3. The revision petitioners filed O.P.No.1160 of 2004 u/s 372 of the Indian Succession Act, 1925 (for short "the Act") for grant of succession certificate claiming that the first petitioner is the legally wedded wife of late Sudhakar and the second petitioner is his daughter.

4. The respondents herein contested the said petition claiming that the first respondent is the wife of late Sudhakar and respondents 2 to 4 are her children born through late Sudhakar, and that late Sudhakar executed a Will dated 05.11.1993 in their favour. The respondents also filed I.A. No. 1117 of 2007 under order 16 Rules 1 & 2 read with Section 151 CPC to summon one G.

Ramaswamy stated to be the attesting witness of the Will, dated 05.11.1993, to give evidence as a Court witness. Though the same was opposed by the petitioners herein, the Court below, by order dated 07.09.2007, allowed I.A. No. 1117 of 2007. Aggrieved by the same, the present revision petition has been filed.

5. I have heard the learned Counsel for the petitioners and perused the material on record.

6. It is the case of the respondents that the proposed witness G. Ramaswamy being one of the attestors to the Will dated 05.11.1993, was a crucial witness to decide the real question in controversy, however inspite of their request the witness was reluctant to give evidence on their behalf, for the reasons best known to him. Therefore, it was prayed to summon him as a Court witness to elicit the real facts about the execution of the Will dated 05.11.1993.

7. In the counter filed in I.A. No. 1117 of 2007 the petitioners herein alleged that the Will, dated 05.11.1993, was brought into existence by forging the signature of late Sudhakar as well as the Notary in collusion with the alleged attestors subsequent to the receipt of the notice in O.P.No.1160 of 2004. It is also contended that since no list of witnesses was filed within the time stipulated as required under Order 16 Rule 1 CPC, it is not open for the respondents herein to file an application to summon the said Ramaswamy as a Court witness. Thus, it is prayed that the petition being frivolous and vexatious is liable to be dismissed.

8. The Court below allowed the application expressing its satisfaction that summoning the proposed witness is necessary in the interests of justice and to adjudicate the dispute between the parties effectively.

9. Learned Counsel for the revision petitioners vehemently contended that the petition itself is not maintainable under Order 16 Rules 1 & 2 of CPC since the said provision does not entitle a party to the proceedings to make an application to summon a person to examine as Court witness. It is also contended that having failed to include the name of the said witness in the list of witnesses, it is not open to the respondent to make an application to examine him as a Court witness. At any rate, in the absence of any material to show that the proposed witness refused to come into the witness box for deposing on behalf of a party, the Court below ought not to have allowed the application to summon him as a Court witness.

10. In support of his submissions, the learned Counsel for the petitioner has relied upon *Mange Ram Vs. Brij Mohan and Others*, ; *Vidhyadhar Vs. Manikrao and Another*, ; *Thakur Sen Negi Vs. Dev Raj Negi and another*, .

11. Rule 14 of Order 16 of CPC runs as under:

Court may of its own accord summon as witnesses strangers to suit- Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary (to

examine any person, including a party to the suit) and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

12. A plain reading of Order 16 Rule 14 of CPC shows that it is the sole discretion of the Court to summon any person to give evidence as a witness or to produce any document in his possession, if the Court thinks it necessary. The only prohibition provided under Rule 14 is that such a person should not have been called as a witness by a party to the suit. Though the language of Rule 14 shows that the discretion has to be exercised by the Court at its own motion but not on an application made by a party, the law is well settled that the application, if any, made by the parties can be taken as an information to the Court and in case the Court finds it necessary, a witness can be summoned to give evidence. Having considered an identical question in *National Insurance Co. Ltd. and Others Vs. Susru Sea Foods*, , this Court held that the jurisdiction of the Civil Court under Order 16 Rule 14 of CPC can even be set in motion by any of the parties to the suit. Hence, the contention that the petition itself is not maintainable cannot be accepted.

13. So far as the objection that since the respondents failed to mention the name of the witness in the list of witnesses, they are estopped from making a request to summon him as a Court witness is concerned, it is to be noted that in the case on hand, neither of the parties filed list of witnesses since the O.P. filed under the provisions of the Succession Act requires to be tried following the summary procedure. Hence, the mere fact that the name of the witness was not shown in the list of the witnesses was immaterial. The decision in *Rani Bai's case* (2 supra), cited by the learned Counsel for the petitioners, which arises under the regular suit proceedings, is therefore, clearly distinguishable on facts and not applicable. Similarly in *Mange Ram's case* (1 supra), the question raised was whether the Court can decline to examine a witness on behalf of a party when the name of such witness was not mentioned in the list. The said issue was discussed and decided by the Supreme Court on interpretation of Rules 1 & 1A of Order 16 CPC. Since the present case relates to exercise of powers under Rule 14 of Order 16 CPC to summon a person as Court witness, the ratio laid down in *Mange Ram's case* is also not applicable.

14. Coming to the merits of the case, it is relevant to note that the presence of the proposed witness, said to be one of the attestors of the Will in question is undoubtedly necessary for an effective adjudication of the issue involved in the proceedings. The Court below having regard to the facts and circumstances of the case and having recorded its satisfaction that the evidence of the proposed witness is necessary and useful to arrive at a just conclusion, has rightly allowed the application. Such discretion exercised by the court on proper appreciation of the material on record, cannot be held to be unreasonable or perverse and

warrants no interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

15. The further contention raised by the learned Counsel for the petitioners that examination of the attestor of the document in question as a Court witness, would prejudice the interest of the petitioners also does not deserve any consideration since even when a witness is summoned to give evidence as a Court witness, it is always open to the parties to cross-examine such witness and neither party can be said to have suffered any prejudice.

16. For the aforesaid reasons, the revision petition is devoid of any merit and the same is accordingly dismissed. No costs.